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10 Attorneys for Plaintiffs
Kos Media and Markos Moulitsas Zúniga

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 KOS MEDIA, LLC and
15 MARKOS MOULITSAS ZÚNIGA,

16 PLAINTIFFS,

17 VS.

18 RESEARCH 2000 AND DELAIR D. ALI,

19 DEFENDANTS.
20
21
22

Case No.: 3:10-CV-02894 MEJ-

NOTICE AND APPLICATION FOR
ENTRY OF DEFAULT
JUDGMENT

Complaint filed: June 30, 2010.

Hearing Date: April 05, 2010
Hearing time: 10:00 A.M.

Location: Courtroom B.

23 TO DEFENDANTS RESEARCH 2000 AND DELAIR D. ALI AND THEIR
24 ATTORNEY(S) OF RECORD:

25 PLEASE TAKE NOTICE THAT on April 05, 2012 at 10:00 a.m., or as soon
26 thereafter as this matter may be heard by the above-entitled Court, located at 450
27 Golden Gate Avenue, San Francisco, CA 94102, plaintiffs will present their
28

1 application for a default judgment against defendant. The clerk has previously entered
2 the default of said defendants on May 20, 2011 (Research 2000) and December 6,
3 2011 (Ali).

4 At the time and place of hearing, plaintiff will present proof of the following
5 matters:

6 1. Defendants Research 2000 and Delair D. Ali are not infants or
7 incompetent persons or in military service or otherwise exempted under the Soldiers'
8 and Sailors' Civil Relief Act of 1940; and

9 2. Said defendants have appeared in this action, but have failed to file
10 responsive pleadings and, in the case of Research 2000, a corporation, failed to secure
11 counsel.

12 3. Defendants were informed of Plaintiffs' intent to seek default judgment
13 via electronic mail dated December 6, 2011, and notice of this application for default
14 judgment by court was served on said defendants on February 22, 2012, by mail and
15 electronic mail as required by Fed. R. Civ. P. 55(b)(2).

16 4. Plaintiff is entitled to judgment against said defendants on account of the
17 claims pleaded in the complaint, to wit: breach of contract; unfair business practices
18 pursuant to Cal. Bus. and Prof. Code §§ 17200 et seq.; breach of implied warranty;
19 fraud and intentional misrepresentation; negligent misrepresentation; constructive
20 fraud; and conversion.

21 5. Defendants' willful, intentional, and continuous fraud upon plaintiffs in
22 affirmative misrepresenting the truth regarding its lack of actual polling operations
23 represents an independent tort actionable under California law. *See Robinson*
24 *Helicopter Co., Inc. v. Dana Corp.*, 22 Cal.Rptr.3d 352, 34 Cal.4th 979, 102 P.3d 268
25 (2004). But for Ali's affirmative misrepresentations regarding his lack of actual
26 polling operations, Plaintiffs would have ceased contracting with Defendants and
27 publishing their fictitious polls. Accordingly, Plaintiffs also seek an award of
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1 exemplary damages pursuant to Cal. Civil Code §3294(a) equal to double the amount
2 of contractual damages.

3 6. The amount of judgment sought is the sum of \$315,000.00 as set forth in
4 the attached declaration of Adam C. Bonin.

5 This Application is based on this Notice, the attached declaration of Adam C.
6 Bonin and the pleadings, files and other matters that are on file with the Court and
7 may otherwise be presented at a hearing.

8
9 DATED: February 22, 2012

COZEN O'CONNOR

10
11 By:

-/S/-

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